

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1507.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF RALSTON SELECT BRAN AND DIABETIC FLOUR.

On November 28, 1910, the United States Attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Acme Mills Co., a corporation, Portland, Oreg., alleging—

(1) Shipment by said company, in violation of the Food and Drugs Act, on or about February 10, 1910, from the State of Oregon into the State of Washington of a consignment of 15 cases of a food product known as "Ralston Select Bran," which was misbranded. The product was labeled: "Ralston Select Bran Pure and Clean. Manufactured by Acme Mills Co., Portland, Oregon. The Acme Mills Co. are the only authorized manufacturers for the Pacific Coast of Ralston Health Breakfast Foods. Ralston Select Bran. Prepared as a beverage it is the most refreshing drink that ever passed human lips. It can be drank hot or cold, with or without lemon. The phosphorus contained in the bran is vitally necessary for the development and vigor of the human frame. Ralston Select Bran makes, therefore, the best drink for children, invalids and nursing mothers. The drain on the system is replenished by the phosphatic nourishment contained in this simple but wonderful beverage. It aids digestion, cures torpidity of the liver, gives tone and color to the complexion, brightness to the eye, and is both nerve and brain food. Persons who are fatigued, shop girls, care worn mothers, this is the drink for you. Let anyone whose brain is tired take a glassful of Bran Tea with or without lemon and the result will be surprising."

Examination by the Bureau of Chemistry of this Department showed the following results:

	Per cent.
Total phosphoric acid in bran.....	3.22
Phosphoric acid left in bran after preparing the bran tea....	2.76
Phosphoric acid removed in tea.....	.46
(Equivalent to removing 14.3 per cent of total phosphoric acid in the bran.)	
Phosphoric acid in the bran tea.....	.086

Misbranding of the product was alleged in the information for the reason that the label or brand upon each of the packages or cartons of the product was misleading and calculated and intended to deceive purchasers and intending purchasers thereof because, as a matter of fact, the phosphorus alleged to have been contained in the said food product was not vitally necessary for the development and vigor of the human frame. Furthermore, the said label and brand purported and represented that the product contained and had some special properties not common to ordinary bran, when in truth and in fact it was nothing more than ordinary bran of good quality, containing about 8 per cent of phosphoric acid, six-sevenths of which was removed in the process of making tea from said bran. Misbranding was further alleged in that the statements contained upon the label and brand, "It aids digestion, cures torpidity of the liver, gives tone and color to the complexion, brightness to the eye, and is both a nerve and brain food", were false and misleading and deceive the purchaser, because in truth and in fact the said product was not an aid to digestion and had no properties or virtues in that direction; it had no power or virtue whatever to effect a cure or aid in the cure of a torpid liver, and the amount of nutriment contained therein was insufficient to affect in any wise the tone or color of the complexion or to affect in any manner the brightness of the eye; and further, the statement contained in the label that the product was both a nerve and brain food, was misleading and deceptive in that it conveyed the idea and impression that the product acted specifically as a food for the nerves and brain, whereas in truth and in fact it did not and possessed no particular property or virtue whatever as a food for these organs and had no virtues or properties beyond those contained in ordinary bran.

(2) Sale by said company under a guaranty and delivery for shipment from the State of Oregon into the State of Idaho, on or about April 5, 1910, in violation of the Food and Drugs Act, of 9 sacks containing about 10 pounds each of a product known as "Diabetic Flour", which was misbranded. The product was branded and labeled: "Acme Mills Co. Diabetic Flour Milled by special Process to preserve gluten properties of wheat. Portland, Or. Tacoma, Wash. Lamar, Wash. Acme Diabetic Flour."

Examination by the Bureau of Chemistry of this Department showed the following results:

	Per cent.
Moisture	9.37
Ash	1.12
Ether extract	1.87
Nitrogen	1.50
Protein (N×6.25)	9.38
Crude fiber	0.77
Carbohydrates, excluding crude fiber (acid conversion)	71.4
Microscopical examination shows only wheat starch.	

Misbranding was alleged in the information for the reason that the statements upon the label and brand were false and misleading, being calculated and intended to represent to intending purchasers of the alleged "Acme Diabetic Flour" that gluten was the principal ingredient and constituent thereof, when in truth and in fact the product contained a very small percentage of gluten and nitrogenous matter and did not contain more gluten than is found in ordinary whole wheat flour, and did not have a greater diabetic value than whole wheat flour; that said label and brand was false and misleading in that the sacks having the same thereon purported to contain a food product designed for the use of those afflicted with diabetes and other diseases in which the use of food products containing large quantities of starch is dangerous, and said label and brand was calculated to and would mislead and deceive intending purchasers thereof into the belief that the product contained therein was especially adapted as a food for persons suffering with diabetes, and that said flour would prove beneficial as an article of diet by persons suffering from said disease, when in truth and in fact said product was not specially or at all adapted as an article of diet for persons suffering from diabetes and would not prove beneficial or useful as an article of diet in said disease, but would be apt to prove harmful and injurious if used by persons suffering with said disease, and said label and brand was also false and misleading in that the same purported and represented that the alleged diabetic flour contained a very small quantity or no starch, when in truth and in fact one of the principal ingredients of the same was starch.

On May 17, 1911, the case having been brought to trial by a jury, a verdict of guilty was returned against the defendant company. On May 24, 1911, motion for new trial was filed on behalf of defendant and overruled December 26, 1911. On February 12, 1912, the court imposed a fine of \$50 and costs.

W. M. HAYS,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *April 30, 1912.*